



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-576

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27621.

The Texas Department of Insurance ("the department") received a request for "any and all information concerning Equipment Insurance Managers, Inc." You say some of the requested information has been provided to the requestor, but the department seeks to withhold from required public disclosure portions of the requested information based on sections 552.101 and 552.111 of the Government Code.

Section 552.101 excepts from required public disclosure information considered confidential by law. You urge that the department may withhold certain information under section 552.101 in conjunction with the informer's privilege. You enclosed what you say are "representative samples" of the requested information. We note that you have marked as within the informer's privilege not only information that identifies the informer, but also statements of the informer.

The informer's privilege may be invoked by a governmental body to protect the identity of a person who furnishes information about a violation of law to an official having a duty of enforcing particular laws. *See* Open Records Decision No. 515 (1988). The privilege applies when an informer reports a violation of a civil or criminal statute to an administrative official having a duty of inspection or of law enforcement within the official's particular sphere. *See* Attorney General Opinion MW- 575 (1982) (permitting Department of Agriculture to invoke informer's privilege); Open Records Decision No. 515 at 2.

The department has a duty to enforce laws concerning insurance and insurance companies. Ins. Code art. 1.10(1). The informer here reported information about violations of insurance laws.

We conclude that the informer's privilege applies in this case. Moreover, we agree that the statements of the informer tend to identify the informer. Accordingly, the department may withhold from required public disclosure all information that identifies the informer, including the informer's statements. *See* Open Records Decision No. 320 (1982).

You also raise section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

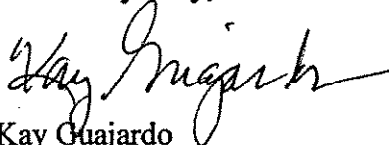
This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.*

We conclude that the information you have marked contains the advice, recommendation, and opinions reflecting the policymaking process of the department. Accordingly, the department may withhold the information pursuant to section 552.111 of the Government Code. The remaining information, except as noted above, must be released.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/WMW/rho

Ref.: ID# 27621

Enclosures: Submitted documents

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